

Friday, 2 August 2019 (1000)

The United States Navy-Marine Corps Court of Criminal Appeals Courtroom
1254 Charles Morris Street SE, Bldg. 58, Suite 320
Washington Navy Yard, DC 20374

United States v. Hospital Corpsman Third Class (E-4) Darrius D. Upshaw, U.S. Navy

NMCCA No. 201600053

Before the Court (Panel 3): Chief Judge Crisfield
Senior Judge Hitesman
Judge Gaston

For Appellant: LT Clifton E. Morgan III, USN

For Appellee: Capt Luke Huisenga, USMC
LT Kimberly Rios, USN

A general court-martial consisting of members with enlisted representation convicted Appellant, contrary to his pleas, of two specifications of abusive sexual contact and one specification of sexual assault, in violation of Article 120, UCMJ (10 U.S.C. § 920 (2012)), involving two separate victims. The members sentenced Appellant to reduction to paygrade E-1, forfeiture of all pay and allowances, ten years' confinement, and a dishonorable discharge. The Convening Authority approved the sentence as adjudged.

On Appellant's initial appeal, this Court affirmed his convictions of abusive sexual contact and set aside his conviction of sexual assault. The Court authorized a rehearing, and remanded the matter to the Convening Authority for action. On remand, the Convening Authority dismissed those specifications that this Court set aside and ordered a sentencing rehearing for the affirmed convictions. At the rehearing, a panel of members with enlisted representation sentenced Appellant to reduction in paygrade to E-1, thirty-six months' confinement, and a dishonorable discharge. The Convening Authority approved the sentence as adjudged.

Appellant now challenges both his initially affirmed convictions of abusive sexual contact and his sentence from the rehearing.

The issue to be argued before the panel is:

When a judge recuses himself, he may not subsequently play a procedural or substantive role in the case. Here, the military judge recused himself and continued to consult with his successor on important legal issues in the case. *Did the military judge play a substantive role and act inconsistent with his recusal?*